KEITH E. EGGLETON, State Bar No. 159842
DIANE M. WALTERS, State Bar No. 148136
KRISTIN A. DILLEHAY, State Bar No. 187257
L. DAVID NEFOUSE, State Bar No. 243417
WILSON SONSINI GOODRICH & ROSATI
Professional Corporation
650 Page Mill Road
Palo Alto, CA 94304-1050
Telephone: (650) 493-9300
Facsimile: (650) 565-5100
Email: dwalters@wsgr.com

Attorneys for Defendants
S. DOUGLAS HUTCHESON, AMIN I. KHALIFA, GRANT A. BURTON, MICHAEL B. TARGOFF, JOHN D. HARKEY, JR., and ROBERT V. LaPENTA

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

HCL PARTNERS LIMITED PARTNERSHIP, on behalf of itself and all others similarly situated, Plaintiff, v. LEAP WIRELESS INTERNATIONAL, INC., S. DOUGLAS HUTCHESON, AMIN I. KHALIFA, GRANT A. BURTON, MICHAEL B. TARGOFF, JOHN D. HARKEY, ROBERT V. LaPENTA, AND PRICEWATERHOUSECOOPERS, LLP, Defendants.	CASE NO.: 07-CV-2245-BTM **REQUEST FOR JUDICIAL NOTICE IN SUPPORT OF INDIVIDUAL DEFENDANTS' MOTION TO DISMISS PLAINTIFFS' CONSOLIDATED CLASS ACTION COMPLAINT** Date: November 21, 2008 Time: 11:00 a.m. Dept: 15 Before: Hon. Barry Moskowitz
KENT CARMICHAEL, Individually and On Behalf of All Others Similarly Situated, Plaintiff, v. LEAP WIRELESS INTERNATIONAL, INC., S. DOUGLAS HUTCHESON, AMIN I. KHALIFA, GRANT A. BURTON, MICHAEL B. TARGOFF, JOHN D. HARKEY, ROBERT V. LaPENTA, AND PRICEWATERHOUSECOOPERS, LLP, Defendants.	CASE NO.: 08-CV-0128-BTM

Defendants S. Douglas Hutcheson, Amin I. Khalifa, Grant A. Burton, Michael B. Targoff, John D. Harkey, Jr., and Robert V. LaPenta (collectively, the "Individual Defendants") respectfully request that the Court take judicial notice, pursuant to Federal Rule of Evidence 201, of the documents submitted as exhibits to the Declaration of Diane M. Walters in Support of the Individual Defendants' Motion to Dismiss Plaintiffs' Consolidated Class Action Complaint ("Walters Decl."), filed concurrently herewith. Judicial notice of these documents is appropriate for the reasons set forth below.

A. Documents Filed with the Securities and Exchange Commission

1. Leap Wireless International, Inc.'s ("Leap") Securities and Exchange Commission ("SEC") Form 8-K filed with the SEC on September 7, 2007, Walters Decl., Ex. A.

2. Excerpts from Leap's Schedule 14A Proxy Statement filed with the SEC on April 6, 2007, Walters Decl., Ex. B.

3. SEC Forms 4 filed with the SEC (S. Douglas Hutcheson), Walters Decl., Ex. C.

4. SEC Forms 4 filed with the SEC (James D. Dondero), Walters Decl., Ex. D.

5. SEC Forms 4 filed with the SEC (Glenn T. Umetsu), Walters Decl., Ex. E.

Judicial notice of the foregoing documents is appropriate because these documents, which were filed with the Securities and Exchange Commission ("SEC"), are a matter of public record and are "capable of accurate and ready determination by resort to resources whose accuracy cannot reasonably be questioned." Fed. R. Evid. 201(b), (d). Courts in the Ninth Circuit routinely hold that SEC filings may properly be considered on a motion to dismiss. *See In re Silicon Graphics Inc. Sec. Litig.*, 183 F.3d 970, 986 (9th Cir. 1999) ("'[h]aving raised questions about [officers'] stock sales [and] based [her] allegations on [officers'] SEC filings . . . [plaintiff] can hardly complain when [the officers] refer to the same information in their defense.'") (alterations in original) (citation omitted); *In re F5 Networks, Inc. Derivative Litig.*, No. C06-794, 2007 WL 2476278, at *1 n.1 (W.D. Wash. Aug. 6, 2007) (taking judicial notice of SEC filings under Fed. R. Evid. 201); *DeMarco v. DepoTech Corp*. 149 F. Supp. 2d 1212, 1218 (S.D. Cal. 2001) (taking judicial notice of documents filed with the SEC by the securities issuer and its principals); *Plevy v. Haggerty,* 38 F. Supp. 2d 816, 821 (C.D. Cal. 1998) (judicially noticing SEC filings; "[o]n a motion to dismiss, a court may take judicial notice of matters of public record outside the pleadings"); *see also Kramer v. Time Warner Inc.*, 937 F.2d 767, 774 (2d Cir. 1991).

Specifically, courts in the Ninth Circuit have held that a company's proxy statements and SEC Forms 4 may be judicially noticed. *See, e.g.*, *Silicon Graphics*, 183 F.3d at 986 (holding that a court may take judicial notice of Forms 4 filed with the SEC, which are deemed incorporated by reference into a complaint when a plaintiff's allegations rely on a defendant's stock sales); *Indiana Elec. Workers Pension Trust Fund, IBEW v. Dunn*, No. C-06-01711, 2008 WL 878424, at *11 n.7 (N.D. Cal. Mar. 28, 2008) (taking judicial notice of a proxy statement filed with the SEC under FRE 201); *In re Computer Scis. Corp. Derivative Litig.*, 244 F.R.D. 580, 587 n.8 (C.D. Cal. 2007) (same); *In re Hansen Natural Corp. Sec. Litig.*, 527 F. Supp. 2d 1142, 1150 n.2 (C.D. Cal. 2007) (taking judicial notice of several Forms 4 filed during the class period and referenced in the complaint); *Allison v. Brooktree Corp.*, 999 F. Supp. 1342, 1353 n.3 (S.D. Cal. 1998) (taking judicial notice of an individual defendant's Form 4 where purchases to the SEC were reported); *DeMarco*, 149 F. Supp. 2d at 1218 (same).

The Court may consider on a motion to dismiss SEC Forms 4 that are not explicitly referenced in the complaint, but that a plaintiff implicitly relies upon for his stock sale allegations, and whose authenticity is not questioned. *See Silicon Graphics*, 183 F.3d at 986 (holding that a court may take judicial notice of Forms 4 filed with the SEC, which are deemed incorporated by reference into a complaint when a plaintiff's allegations rely on a defendant's stock sales); *Morgan v. AXT, Inc.*, No. C 04-4362, 2005 WL 2347125, at *7 (N.D. Cal. Sept. 23, 2005) (taking judicial notice of SEC Forms 4 even though they were not expressly referenced in the complaint); *Wietschner v. Monterey Pasta Co.*, 294 F. Supp. 2d 1102, 1109 (N.D. Cal. 2003) (taking judicial notice of SEC Forms 4 not explicitly referenced in the complaint because the filings were "integral to the stock sale allegations made in the Complaint").

Accordingly, the Court may take judicial notice of Leap's proxy statement, SEC Form 8-K, and the Forms 4 filed with the SEC.

CONCLUSION

For the foregoing reasons, the Individual Defendants respectfully request that the Court grant their request for judicial notice of the above-listed exhibits in conjunction with the concurrently filed Motion to Dismiss Plaintiffs' Consolidated Class Action Complaint in this action.

Dated: August 28, 2008

Respectfully submitted,

WILSON SONSINI GOODRICH & ROSATI
Professional Corporation

By: s/ Diane M. Walters
Diane M. Walters
Email: dwalters@wsgr.com

Attorneys for Defendants
S. Douglas Hutcheson, Amin I. Khalifa, Grant A. Burton, Michael B. Targoff, John D. Harkey, Jr., and Robert V. LaPenta